

GIBBONS

CHARLES H. CHEVALIER
Director

Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102-5310
Direct: (973) 596-4611 Fax: (973) 639-6263
cchevalier@gibbonslaw.com

July 20, 2021

VIA ECF

Hon. Michael A. Shipp, U.S.D.J.
U.S. District Court
District of New Jersey
Clarkson S. Fisher Fed. Bldg. & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608

Re: Amgen Inc. v. Sandoz, Inc., No. 3:18-cv-11026(MAS)(DEA)(consolidated)

Dear Judge Shipp:

We, along with Covington & Burling LLP and Sidley Austin LLP, represent Plaintiff Amgen Inc. (“Amgen”) in the above-referenced consolidated Hatch-Waxman litigation. We write on behalf of Amgen to request guidance as to the Court’s preferred format for the closing arguments to be held on July 28, 2021.¹

Amgen proposes the following format for closing arguments, which, like the order of proof at trial, forgoes rebuttal on all issues:

- Amgen presents on infringement of U.S. Patent No. 7,893,101 by Zydus Pharmaceuticals;
- Zydus Pharmaceuticals presents on infringement of U.S. Patent No. 7,893,101 and Defendants present on all validity issues; and
- Amgen presents on all validity issues.

For Your Honor’s reference, the format in the Pretrial Order (ECF Nos. 379 at 130; 422 at 117; 425) followed by the parties during trial, is as follows:

- Amgen presents on infringement of U.S. Patent No. 7,893,101 by Zydus Pharmaceuticals and on objective indicia;
- Zydus Pharmaceuticals presents on infringement of U.S. Patent No. 7,893,101 and Defendants present on all invalidity issues including objective indicia; and
- Amgen presents on all invalidity issues.

¹ Amgen sought Defendants’ agreement on a joint proposal. However, Defendants took the position that the presentation of evidence in the Pretrial Order and at trial “is wholly irrelevant,” and that Defendants should now get a rebuttal on invalidity. It is Amgen’s position that closings should mimic the presentation of evidence at trial. Moreover, with post-trial briefing complete and the parties having exchanged hundreds of pages of proposed findings, there is no need for rebuttal.

GIBBONS P.C.

July 20, 2021
Page 2

If the Court would like to discuss this matter further, Amgen is available to discuss at the Court's convenience. Amgen thanks the Court for its consideration and assistance in this matter.

Respectfully submitted,

s/ Charles H. Chevalier
Charles H. Chevalier

cc: All counsel of record (via ECF and Email)